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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,347	08/03/2001	Kelso G. Sims	733.00067	7293

7590

09/12/2003

Richard S. Phillips
Wood, Phillips, VanSanten, Clark & Mortimer
Suite 3800
500 West Madison
Chicago, IL 60661-2511

EXAMINER

NASH, BRIAN D

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 09/12/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922,347

Applicant(s)

SIMS ET AL.

Examiner

Brian D Nash

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10,11,13-16,18,19 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10,11,13-16,18,19 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3721

DETAILED ACTION

1. This action is in response to applicant's request for continued examination received 18 June 2003 whereby applicant requested the amendment received 7 May 2003 also be considered. Examiner acknowledges cancellation of claims 2, 9, 12, 17, 20, and 21 and the addition of new claim 22. The claims now pending in the application are 1, 3-8, 10-11, 13-16, 18-19, and 22.
2. The indicated allowability of claims 3-8, 10-11, 13-16, and 18 and 19 is withdrawn in view of the newly discovered references (US 5,868,183 to Kozyrski et al and US 3,864,053 to Harwood). Rejections based on the newly cited reference(s) follow. The examiner regrets any inconvenience caused to the applicant.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US 5,868,183 to Kozyrski et al. Kozyrski et al show the same invention including a tool (60) and a tool mount base (10) for positioning the tool vertically and laterally with respect to a work piece; a tool carrier (14) having a surface receiving and supporting the tool and adjustable vertically on the tool mount base with respect to the work piece (F); and a spacer (18,86) on the tool mount base

Art Unit: 3721

to engage the work piece and position the tool laterally with respect to the work piece (see Figures 1,2).

5. Claims 3-8, 11, and 13-16 are rejected under 35 USC 102 (b) as being anticipated by US 3,864,053 to Harwood. Harwood discloses the same invention including a base (10) comprising a center plate (15) attached by fasteners (12,26) to side plates (19), a tool carrier (16) slideable on center plate (15) (see column 4, lines 9-21) with a vertical component of movement provided by elements (12,24,26,27) (see column 3, lines 18-47), and a spacer (28).

Regarding claims 5-8 please note Fig. 5, which shows a variation of the tool wherein the spacers (28) are laterally adjustable.

Regarding claims 7 and 11, please note that the carrier is adjustable up to 45 degrees.

Regarding claims 13-14 note the dovetail and guide configuration shown in Figs. 3,5.

Regarding claims 15-16 Harwood shows movement limitation via slot 24 and via the dovetail configuration.

6. Claims 10, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,269,996 B1 to McAllister. McAllister shows the same invention including a tool mount having a base (36), a tool carrier (22) having a surface for receiving a tool (18) and the tool carrier is adjustable vertically on the base to position the tool vertically with respect to a work piece (see column 5, lines 26-35). McAllister also shows a spacer (40) on the base which engages an edge of flooring strip to position the tool mount laterally and a handle assembly (14) in which the handle (64) is a wand (64) extending upwardly from the tool mount and away from the work piece at an angle of the order of 45 degrees.

Art Unit: 3721

Claim Rejections - 35 USC § 103

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,269,996 B1 to McAllister in view of US 5,749,508 to Clothier. As discussed above in paragraph 5 of this office action, McAllister discloses the invention substantially as claimed. However McAllister does not show a safety actuator on the tool with an end engageable with the work piece. Clothier teaches a fastener driver having a safety actuator (106, see Fig. 1) that is engageable with a surface of a work piece.

In view of Clothier, it would have been obvious to one having ordinary skill in the art to have provided McAllister's apparatus with a safety actuator that is engageable with the work piece for the purpose of preventing premature discharge of the tool's firing mechanism.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ansett et al, White, Medwed, and Burlingame are cited to show related references.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is (703) 305-4959. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at (703) 308-2187.

The fax numbers for this Group are:

Before Final	703-872-9302
After Final	703-872-9303
Customer Service	703-872-9301

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Brian D. Nash
8 September 2003


Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700